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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,640	07/20/2001	Roland Durner	032498-009	6941
21839	7590	03/24/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			SODERQUIST, ARLEN	
POST OFFICE BOX 1404			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22313-1404			1743	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,640

Applicant(s)

DURNER ET AL.

Examiner

Arlen Soderquist

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howlett (US 6,264,902) or DeTemple (US 5,960,708) in view of Hammele (DE 3442835) and Chess (US 5,674,456) or Elesh (US 3,831,557).

In the patent Howlett teaches and instrument sterilization container that has an improved latching mechanism. The sterilization container for sterilizing, storing and transporting instruments is provided with a base portion having a plurality of drainage wells. The drainage wells comprise a downwardly sloping surface terminating in a drainage aperture. Upper portions of the sloping surfaces support a flexible instrument holding mat within the container. Sterilization containers are formed of thermoplastic liquid crystal polymer, such as a wholly aromatic polyester. A latch mechanism comprises a latch member rotatably supported upon torsion bars within a recessed portion of the container which presents no sharp surfaces to the user. Figures 5 and 6 illustrate an embodiment of the sterilization container (72) which includes a tray (74), lid (76) and mat (not shown) similar to the embodiment shown in figures 1-4, but having an alternative latching mechanism (78). The lid has an apertured top wall (80), side and endwalls (82,84), respectively, depending therefrom. A latch member (86) is integrally molded into a recessed portion (88) in each endwall (84) of the lid. A pair of torsion bars (90) extend inwardly of the recess portion from opposing sidewalls (92) thereof to rotatably support the latch member. The torsion bars bias the latch member into a standing, engaged position as shown best

in figure 6, and allow a limited amount of rotation away from the engaged position. A notch (94) in each endwall (96) of the tray forms an engagement surface (98). A lip (100, detent) protruding from a lower portion (102) of the latch member engages the engagement surface on the tray to thereby hold the lid securely to the tray. Finger pressure against an actuation surface (104) on an upper portion (106) of the latch member pivots the latch member about the torsion bars to disengage the engagement surface from the lip and thereby release the lid from the tray. When the pressure on the actuation surface is released, the torsion bars return the latch member to its standing, engaged position. All edges and surfaces of the latch member are rounded and smooth especially those on that portion (108) of the latch member facing outwardly of the recess. The only exception is the lip which lies on that portion (109) of the latch member facing inwardly of the tray, to thereby present no sharp edges or surfaces which may engage and tear the users protective glove (not shown). All portions of the latching mechanism are integrally molded with either the tray or lid thereby reducing manufacturing and assembly costs. Of course, the orientation of the latching mechanism may be reversed, such that the latch member is formed in the tray. Further, the lid could be adapted to pivot about a hinge (not shown) and of course, the latching mechanism need not be provided in the endwall but could be located elsewhere on the container. Howlett does not teach the specific orientation of the latch member claimed or the formation of a sealed container.

In the patent DeTemple teaches a stackable, atmospheric controlled shipping container having upper and lower members that are hermetically sealed together for containing perishables therein. The containers can be used for storage and transportation of perishable food and other items as well as delicate non-perishables such as electronic components. The ability to control the interior atmosphere such as by purging it of oxygen is advantageous in that it inhibits the buildup of corrosion on electronic parts and equipment. A resilient member preferably is provided in the interior of the container to keep the atmosphere or gases therein within a desired pressure range. In figure 1, a container (10) for containing perishables and other atmosphere sensitive items is shown and includes a main lower housing member or body (12) and an upper housing member or lid (14). The container housing members can take on a generally rectangular configuration, and are preferably hermetically sealed together so that the container interior (16) is sealed off from the exterior ambient environment when the upper housing member is latched

closed on the main lower housing member via latch assembly (18). The containers include a latch assembly (170, as shown in figures 29-35) for locking the container lid onto the container body. The latch assembly is mounted to the lid via latch mounting member (212), as shown in figures 30-32. The latch mounting member is mounted one at each of the lowered side portions (166,168) on the container lid by way of mounting apertures (172,174) on either side thereof and corresponding mounting apertures (214) formed in the latch mounting member. Figures 33-35 show a latch member (216) that is pivotally attached to the mounting member via mounting apertures (218) thereof aligned with apertures (220) of the mounting member for receiving pivot pins (not shown) therethrough. More specifically, the latch mounting member has a generally U-shaped construction with an elongate section (222) and leg sections (224) formed at either end thereof. The apertures 214 are formed at the distal ends of the leg sections and apertures 220 extend parallel to the apertures 214 and are formed as through apertures so as to be open to space (226) formed between the leg sections. The latch member has a length slightly less than the distance between the inside ends of the mounting member leg sections so as to fit therebetween with the apertures 218 thereof aligned with corresponding apertures 220 in the mounting member leg sections. The latch member includes a hook end (228) for grabbing and locking under overhanging lip (230) of the container body flange (188). Thus, with the latch member pivoted down to its locked position, the compression seal (179) between the container lid and body hermetically seals the interior of the container from communication with the exterior environment. DeTemple does not teach the specific orientation of the latch member claimed or the claimed form of the container seal.

In the published application Hammele teaches a closure for a cover of a container or housing. The closure has a springy pivot arm facing towards the interior of the housing. The arm has a hooked shaped end that engages with a catch on the housing and an actuating arm that extends over its pivot axis. Figures 2-5 show various shapes that the closure arm can take.

In the patent Chess teaches a medical specimen shipping container. The container includes a jar molded from a thermoplastic material having an open top, with the lid hingedly coupled to the top of the jar for movement between open and closed positions. The top of the jar includes a rim projecting upwardly therefrom, with the lid having a recessed inside surface including a sealing ring therein shaped like the projecting rim. The sealing ring contacts the rim

and seals thereagainst when the lid is closed. A snap lock latch is coupled to the lid and releaseably snap locks to a keeper on the jar to positively lock the lid to the jar to prevent leaks.

In the patent Elesh teaches a cat liter box having an integrally hinged shielding cover. The box is designed with a baffle seal for preventing litter from escaping from the box. The cover and pan are hinged together at the back hinges on a common hinge axis. Snap-locks connect the front juncture of the cover and pan in the closed position along the front thereof. The walls (38-41) slant upwardly and inwardly from the free edges of the walls (12-15) whereby they, with the inwardly-extending peripheral flange (42), form effective baffles to retain the filler material in the (10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a latch mechanism as taught by Hammele into the device of Howlett or DeTemple because of its known use for the intended purpose of latching a cover to a container as taught by Hammele and because as recognized by Howlett the latching mechanism can be placed at different locations and take on different forms. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a known form of sealing such as the baffles of Elesh into the Howlett or DeTemple devices because of its recognized ability to prevent material from escaping from a container interior as taught by Elesh and the recognition that containers have benefits for shipping when they are sealable as taught by Chess and DeTemple.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additionally cited art relates to containers having latched lids or covers. The applied Hammele reference has been submitted for translation.

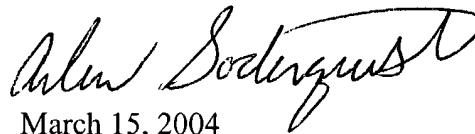
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arlen Soderquist whose current telephone number is (571) 272-1265 as a result of the examiner moving to the new USPTO location. The examiner's schedule is variable between the hours of about 5:30 AM to about 5:00 PM on Monday through Thursday and alternate Fridays.

A general phone number for the organization to which this application is assigned is (571) 272-1700. The fax phone number to file official papers for this application or proceeding is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Arlen Soderquist". The signature is fluid and cursive, with a large, stylized "S" at the end.

March 15, 2004

ARLEN SODERQUIST
PRIMARY EXAMINER